

**MINUTES**  
**HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS**  
**November 16, 2011**

The House Select Committee on Homeowners Associations (Committee) met on Wednesday, November 16, 2011 at 1:00 p.m. in in Room 544 of the Legislative Office Building. Representative Jonathan Jordan of House District 93 (Ashe and Watauga Counties) presided.

The following members were present: Representative Carolyn Justice, Co-Chair, Representative Kelly Hastings, Representative Julia Howard, Representative Darrell McCormick, Representative Rodney Moore, Representative Winkie Wilkins, Representative Tim Spear, and Representative Jennifer Weiss. The attending Sergeants-at-Arms were Mr. Fred Hines, Ms. Martha Gadison, and Mr. Bill Bass. Committee staff including Mr. Ed Stiles, Committee Clerk, and Ms. Jennifer McGinnis and Mr. Bill Patterson, Committee Counsels, were also present.

On November 4, 2011, notice was sent to members and interested parties via e-mail, and a corrected notice sent on November 14, 2011. A copy of these notices is included in the attachments to these minutes as **Attachment #1**. Copies of the agenda for the meeting and visitor registration sheets are included in the attachments to these minutes as **Attachment #2** and **Attachment #3**, respectively.

**Call to order and introductory remarks**

Representative Jordan called the meeting to order and began the meeting by introducing Co-Chair Representative Carolyn Justice of House District 16 (Pender and New Hanover Counties).

Representative Jordan then introduced Jennifer McGinnis to present the charge, as described in the letter creating the committee issued by Speaker of the House of Representatives Thom Tillis dated September 15, 2011 (**Attachment #4**).

Representative Jordan then announced that the purpose of today's meeting was a presentation on Chapter 47F, or the Planned Community Act, and information on previous legislative activity on the subject, including proceedings of the previous (2009-2010 Biennium) House Select Committee on Homeowners Associations. Representative Jordan noted that Representative Weiss and Representative McGee were Co-Chairs of that previous committee, and could provide valuable historical information.

Representative Jordan also announced the next meeting will be set for December 5, 2011 at 1:00 p.m. He mentioned having the Attorney General give the committee an overview of House Bill 165, the Planned Community and Condo Act Amendments, which was enacted in the 2011 Session of the General Assembly. Representative Jordan also stated that an overview would be

given by the Real Estate Commission on the implementation of rules in conjunction with the legislation. The committee will also hear from real estate attorneys, professors, and other experts who will provide guidance as to what other aspects of homeowners' associations need to be looked at.

Representative Jordan further stated that a public hearing will be scheduled sometime in January 2012, although an exact date has not been set yet. In that meeting, there will be a forum in which citizens will have a chance to speak on the concerns they have with their homeowners' associations. Since this committee was formed, all members have received emails with complaints regarding homeowners' associations.

Representative Jordan then recognized Committee Counsel Jennifer McGinnis who gave a PowerPoint presentation on Chapter 47F, or the Planned Community Act (**Attachment #5**). Committee Counsel Bill Patterson then followed with a presentation on legislation enacted recently pertaining to homeowners associations (**Attachment #5**).

### **Committee Discussion**

Representative Justice asked Mr. Patterson how the brochure about restrictive covenants would be distributed. Mr. Patterson indicated that he did not think the statute detailed how such a brochure was to be distributed. Mr. Patterson stated his belief that it was the Real Estate Commission's responsibility to determine how that would be accomplished.

Representative Jordan then recognized Representative Weiss, who chaired the previous study committee (from the 2009-2010 Biennium). She stated that the previous committee had filed a pretty ambitious piece of legislation during the 2011 Long Session (HB 165), which Representative Howard also had a hand in crafting. The bill was crafted with the expectation of negotiations and changes that needed to be made. Representative Weiss also stated that a tremendous amount of compromising had to be done. She referenced the importance of Representative Justice's question about the brochure, expressing the view that the more information buyers had the better. She also expressed a desire to have the Real Estate Commission shed more light on the brochure at the December 5 meeting.

Representative Weiss stated that the previous HOA study committee had received a presentation from one of the experts who had a hand in developing uniform legislation focused on providing consumer protection to homeowners to give the North Carolina General Assembly suggestions. Some states had already adopted some parts of the uniform legislation. Representative Weiss also mentioned that the previous committee had used, as its guidance, provisions governing declarant transfer from the State's Condominium Act (Chapter 47C), since the Condo Act expressly terminates declarant control in a certain way, and the current Planned Community Act does not. The thought was to apply the comparable law already existing in North Carolina law as found in the Condo Act to the Planned Community Act, thus such a provision was included in H165 as introduced. The provision concerning termination of declarant control, however, was

negotiated out of House Bill 165 along the way. Representative Weiss also stated that the purpose of expanding the time of foreclosure periods from 30 to 90 days was to give more time to work out a favorable outcome in an effort to avoid foreclosure. She also mentioned that Representative Moore had his own version of a bill that dealt with foreclosures by HOAs.

Representative Jordan asked Representative Howard for additional comments since she was instrumental in crafting House Bill 165 as part of the previous committee. Representative Howard stated the committee had worked many hours, and that she was not aware of as many problems with homeowners that were part of homeowners' associations as there had been until she had served on the previous committee. She stated the committee did the best they could, but the proposals got considerably watered down. When asked by Representative McCormick what the problem was, Representative Howard stated that the problem was people who get elected president of the HOA, and then take liberties and powers that were never intended resulting in some real hair-raising stories

Representative Wilkins asked Representative Weiss if House Bill 165 was meant as a compilation of what the previous committee had hoped for. Representative Weiss stated that the bill was very ambitious, but they were trying to put in a lot of consumer protections. There were other areas such as special assessments that were looked at. As the previous committee was working, there were some other things that could have been recommended such as an agency overseeing HOAs. However, the previous committee was very cognizant of the fact that people wanted less government, and the problem ultimately came down to where the money was going to come from. Representative Weiss did mention that some states have gone to such ideas as mandatory mediation rather than forcing homeowners to go to court to protect their own rights in a situation where the homeowners dues were going to the attorneys defending the homeowners' associations. She further stated that a lot of public input and negotiations would have to take place since there are groups who represent the managers of HOAs that are well organized and weigh in very heavily on such matters.

Representative Spear asked Jennifer McGinnis about the "lien for unpaid assessments which would be extinguished unless the proceedings to enforce the lien are instituted within three years." He asked if there is a simple process currently in statutes that allows for the cancellation of the lien so that the lien does not show up in a title search after three years. Ms. McGinnis stated that she was not aware of any provisions in Chapter 47F, but would check with foreclosure experts to find out if such provisions are in foreclosure law, and get back to Representative Spear.

Representative Moore stated that he had gotten a lot of questions and materials from constituents, and asked if the committee was going to go around the state to get as many people as possible to provide input. Representative Jordan indicated that that would be up to the will of the committee, but he is open to the idea since there are HOA issues all over the state.

Representative Moore then went onto comment about his bill, House Bill 183, which was meant to stop HOAs from having the power to foreclose. He felt a serious conversation needed to be had since HOAs as a nonprofit were like mini-governments that are arbitrarily making it hard on homeowners who are otherwise paid up on their taxes and mortgage payments. He hopes that the provisions of House Bill 183 would be taken into consideration as part of the Committee's discussion as well as the parts of House Bill 165 that were ultimately stripped out.

Representative McCormick stated that although he probably could not support Representative Moore's bill, he appreciated Representative Moore for the work that he has done. Having said that, what is being talked about is a contract between individuals and the responsibility for those individuals to sustain the community and the functions of that community. He stated that what we have is a quasi-municipality, and ultimately his thinking as far as creation of a bill is a bill of rights that would apply from the inception of the charter, with some un-amendable components to what that the contract says and what the expectations are. Most of the horror stories he had heard are relative to the HOAs elections, subject to a sunshine law. He is aware that some developers do not use brokers or realtors to sell their own properties, since they have in-house people doing the sales, so there is never a chance to come into the transaction. With that having been said, Representative McCormick stated that would account for most of the new sales, and suggested that perhaps a professional management group could monitor those elections.

Representative Hastings stated that he was always taught to always disclose that there were restrictive covenants. He could not remember a time when any attorney or agent did not mention the existence of such a covenant. Representative Hastings also mentioned that there was such a thing as a Homeowners' Association Addendum. He asked Representative Weiss if there was a real problem with disclosure. Representative Weiss said that the committee worked with the realtors on developing disclosure requirements. The problem that she encountered is at what point do people find out about the covenants. As Representative Weiss stated, if people are finding out at the closing, the decision to buy has already been made. She stated the committee's initial desire was to give consumers as much information as possible early on.

Representative McCormick also responded to Representative Hastings' question by saying the issue was not with the compliance of the realtors. The realtors' involvement was at the resale end. There is not a broker involved at the initial sale, since the developers' use in-house staff to handle the initial sale.

Representative Justice stated that she managed HOAs for 25 years, but never had a problem as there is a proper way to handle individual situations. Representative Justice understood the separate point that Representative McCormick made about when the lot is sold in the initial sale from the developer, and hoped it was possible to put something in the law for developers to have some kind of brochure such as what the Real Estate Commission has.

Representative Justice stated that in a) three of every ten re-sales, the buyers do not know about the covenants, b) five of every ten, the buyer was never given a set of covenants, and that she thought the comment about the “moving truck being loaded” when the closing papers are being signed (a comment made by Representative Weiss) was one of the most profound statements at that meeting. She did note that not finding out until closing did not excuse the buyer from complying with whatever they signed.

Representative Justice stated that part of the problem is also that when the closing papers are being signed, the attorney’s go through dozens of documents so quickly, that people do not know they’ve violated a covenant until after the fact.

Addressing Representative Howard’s point about HOA leaders behaving in a dictatorial manner, Representative Justice stated a really good manager can control the HOA leadership actions, by consistently reminding them of the rules. The trouble is that a lot of HOAs do not have professional management agencies overseeing them. Representative Justice stated the possibility of talking about having an agency overseeing the HOAs at a cost to the HOAs, where the board members are educated on what they can and cannot do, to address the problem of the HOAs not knowing the changes that are made in the law. She further went on to state that she agreed with Representative Moore about how some HOAs become like mini-governments.

Representative Justice also told Mr. Patterson that she did not understand that part of his presentation, which stated that “[t]he [Planned Community] Act’s foreclosure provisions result in the foreclosure statutes being used for a purpose for which they were not intended. Mr. Patterson indicated that was one of the previous committee’s findings.

Representative Justice also stated that as the Committee heard from experts and citizens, it should find those four or five things that run consistent through all comments. Representative Hastings then asked a question of Representative Weiss. “On the disclosure, where they are going to have to reveal owners’ association information, most everyone knows there is a block for people to check ‘no representation.’ I’m sure you have all dealt with this, and I don’t want to waste the committee’s time, but it is important to my business.” Representative Weiss stated “the no disclosure box on this form is modeled after the no disclosure box on the typical real estate disclosure form you are currently using.” Bill Patterson, Committee Counsel, also confirmed that the “no representation” option was included in the recently enacted legislation governing disclosure of information pertaining to HOAs. Representative Weiss then stated that the point is, at a minimum, that the buyer is going to be on notice that maybe they need to ask what the covenants and the HOA is, particularly those that move to North Carolina from another state.

Representative Wilkins inquired of Representative Justice if there was a repeat trigger that she noticed when the HOAs asked her to manage them. Representative Justice replied that it was mainly because the HOAs were trying to manage themselves and got tired of doing it. She stated

the worst part of managing a HOA was having to send a violation letter to their neighbor. That had the effect of bringing in a third party in an effort to end neighbor-to-neighbor conflict. The third reason was that the HOA might have been unhappy with their current management company.

Representative Justice then commented that it's not just a one-sided issue – there are innocent people, and then others who are willfully not paying their dues which seriously impacts other homeowners. Representative Justice then went on to state that by making sure that the lot owners and board members know and understand the rules, that would solve a lot of problems confronting HOAs.

Representative McCormick stated that he thinks there is a component of the board members not understanding the rules, but also not understanding their obligations. As a quasi-municipality, there has to be some transparency as to how elections are done. Most people know they are in a homeowners' association. Relative to paying their fair share, they entered in to a contract conscientiously, but I want to make sure they are treated fairly within the organization.”

Representative Moore stated that one of the ideas is working with the Real Estate Commission. “When an agent shows a buyer a home and they know that that home is a HOA situation, maybe there could be some type of component to where the agent educates the buyer, let it be documented that the buyer understands what it means to be in a HOA community, and have that as a condition prior to closing.”

Representative McCormick reiterated that a great majority of sales are first time sales which typically do not involve a broker, but rather involve an in-house staffer that works for a developer. The broker involved in the resale will tell the buyer that the home is in a HOA, but the broker is not involved in the initial sale of a home.

Representative Jordan asked Mr. Patterson to clarify the statute regarding the first sale. Mr. Patterson stated that the Residential Property Disclosure Act has several exemptions. One of those involves a sale of a dwelling that has never been inhabited. When a builder builds a house and sells it to the owner, there is no requirement of disclosure by anyone, whether a broker is involved or not.

Representative Jordan commented that restrictions and covenants would be found at the Register of Deeds in a title search by a good competent real estate attorney who would be working for a buyer in a cash purchase or at a first sale.

Representative Jordan, in referencing Representative Justice's comment about going through the paperwork quickly, stated that he takes an hour to go through a simple closing. Representative Justice clarified that it was not the lawyer that was rushing, that it was the volume of paperwork that had to be gone through, as a consequence of actions by the Legislature. She also stated that

sometimes the buyer will go through the motions of understanding what the attorney was saying for fear of looking dumb.

Representative Justice concluded her comments by stating that there is a problem, and hoped that there are solutions that can be found without further burdening realtors or real estate attorneys at closing.

Seeing there were no further questions or comments from the Committee and there being no further business, Representative Jordan adjourned the committee at 3:00 p.m., to reconvene on December 5, 2011 at 1:00 p.m.

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Co-Chair Representative Jonathan Jordan

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Co-Chair Representative Carolyn Justice

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Ed Stiles, Committee Clerk